

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 13-O-10259-RAH
)	
ROBERT IRVING DUSKIS,)	
)	DECISION AND ORDER OF
Member No. 50438,)	INVOLUNTARY INACTIVE
)	ENROLLMENT
<u>A Member of the State Bar.</u>)	

Respondent Robert Irving Duskis (respondent) was charged with failing to comply with all conditions attached to his disciplinary probation. He failed to participate either in person or through counsel, and his default was entered. The Office of the Chief Trial Counsel (State Bar) filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.¹

Rule 5.85 provides the procedure to follow when an attorney fails to participate in a disciplinary proceeding after receiving adequate notice and opportunity. The rule provides that, if an attorney's default is entered for failing to respond to the notice of disciplinary charges (NDC) and the attorney fails to have the default set aside or vacated within 180 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.²

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¹ Unless otherwise indicated, all references to rules are to this source.

² If the court determines that any due process requirements are not satisfied, including adequate notice to the attorney, it must deny the petition for disbarment and take other appropriate action to ensure that the matter is promptly resolved. (Rule 5.85(E)(2).)

In the instant case, the court concludes that the requirements of rule 5.85 have been satisfied and, therefore, grants the petition and recommends that respondent be disbarred from the practice of law.

FINDINGS AND CONCLUSIONS

Respondent was admitted to practice law in this state on January 5, 1972, and has been a member since then.

Procedural Requirements Have Been Satisfied

On April 4, 2013, the State Bar filed and properly served the NDC on respondent by certified mail, return receipt requested, to his membership records address. The NDC notified respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) The United States Postal Service returned the NDC to the State Bar marked “Unclaimed.”

Respondent had actual notice of this disciplinary proceeding as a contract attorney for the State Bar spoke with respondent on the telephone at respondent’s membership records telephone number on May 9, 2013, and told respondent that the NDC in this matter had been filed against him, that he needed to file a response to the NDC, and that he needed to attend the initial status conference in this matter on May 13, 2013. During that phone conversation, the contract attorney also verified respondent’s membership records email address with respondent.³ A little later that same day (May 9, 2013), the contract attorney emailed, to respondent, courtesy copies of the NDC and the State Bar Court’s notice of assignment and initial status conference. Thereafter, in May 2013, the contract attorney sent respondent two more emails reminding and urging respondent to file a response to the NDC.

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³ Effective February 1, 2010, all attorneys are required to maintain a current email address to facilitate communications with the State Bar. (Cal. Rules of Court, rule 9.7(a)(2).)

Respondent failed to file a response to the NDC. On May 31, 2013, the State Bar filed and properly served a motion for entry of default on respondent by certified mail, return receipt requested, to his membership records address. The motion complied with the requirements for a default, including a supporting declaration by a State Bar contract attorney declaring the additional steps taken to provide notice to respondent (rule 5.80) and reflecting that respondent had actual notice of this proceeding. The motion also notified respondent that, if he did not timely move to set aside his default, the court would recommend his disbarment.

Respondent did not file a response to the motion for entry of default, and his default was entered on June 18, 2013. The order entering the default was properly served on respondent at his membership records address by certified mail, return receipt requested. The court also ordered respondent's involuntary enrollment as an inactive member of the State Bar of California under Business and Professions Code section 6007, subdivision (e),⁴ effective three days after service of the order, and he has remained inactively enrolled since that time. The return receipt was returned to the State Bar Court unsigned.

Respondent also did not seek to have his default set aside or vacated. (Rule 5.83(C)(1) [attorney has 180 days to file motion to set aside default].) On March 5, 2014, the State Bar filed and properly served the petition for disbarment on respondent by certified mail, return receipt requested, to his membership records address. As required by rule 5.85(A), the State Bar reported in the petition that (1) respondent had spoken with State Bar Deputy Trial Counsel Maria Ghobadi about this proceeding on three occasions after the entry of his default on June 18, 2013;⁵ (2) there are no other disciplinary investigations or charges pending against respondent;

⁴ Unless otherwise indicated, all references to sections are to the Business and Professions Code.

⁵ In respondent's last conversation with DTC Ghobadi on July 29, 2013, respondent stated that he did not want to participate in the disciplinary process and wanted to stay in default. (March 5, 2014, petition for disbarment at page 6, lines 13-17 [Declaration of DTC Ghobad].)

(3) respondent has two prior records of discipline; and (4) the Client Security Fund has paid out claims totaling \$32,098.56 as a result of respondent's misconduct.

Respondent did not respond to the petition for disbarment or move to set aside or vacate the default. The case was submitted for decision on April 2, 2014.

Respondent has two prior records of discipline.⁶ Pursuant to a Supreme Court order filed on October 20, 1993, respondent was suspended for one year, the execution of which was stayed, and he was placed on probation for two years subject to conditions, including that he be suspended for the first forty-five days of probation. Respondent participated in that prior matter and stipulated to culpability on eight counts of misconduct in five separate client matters: two counts of improperly acquiring interests adverse to those of a client; two counts of failing to communicate; one count of failing to perform legal services competently; one count of failing to inform a client of a written settlement offer; and one count of improperly requiring a client to withdraw his bar complaint as a condition of settlement.

Pursuant to a Supreme Court order filed on November 28, 2011, respondent was suspended for two years, the execution of which was stayed, and he was placed on probation for three years subject to conditions, including that he be suspended for the first ninety days of probation. Respondent participated in that prior matter and stipulated to culpability on ten counts of misconduct in three separate client matters: three counts of failing to account for advanced fees; three counts of failing to refund unearned fees; one count of improper withdrawal; one count of failing to cooperate in a disciplinary investigation; one count of improperly entering into a business transaction with a client; and one count of undertaking representation without disclosing his interest in the subject matter of the representation.

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⁶ The court admits into evidence the certified copies of respondent's prior records of discipline that are attached to the March 5, 2014, petition for disbarment.

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of a respondent's default, the factual allegations in the NDC are deemed admitted and no further proof is required to establish the truth of such facts. (Rule 5.82.) As set forth below in greater detail, the factual allegations in the NDC support the conclusion that respondent is culpable as charged and, therefore, violated a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85(E)(1)(d).)

Case Number 13-O-10259 (Probation Violation Matter)

Respondent willfully violated Business and Professions Code section 6068, subdivision (k) (duty to comply with probation conditions) by failing to comply with all conditions (specifically, quarterly reports, Ethics School, Client Trust Accounting School, and proof of restitution) attached to the disciplinary probation ordered by the Supreme Court in its Order filed on November 28, 2011.

Disbarment is Recommended

Based on the above, the court concludes that the requirements of rule 5.85(E) have been satisfied, and respondent's disbarment is recommended. In particular:

(1) the NDC was properly served on respondent under rule 5.25;

(2) respondent had actual notice of the proceeding prior to the entry of his default, as he spoke on the telephone with a State Bar contract attorney about the proceeding and the contract attorney emailed courtesy copies of the NDC and the State Bar Court's notice of assignment and initial status conference and sent respondent two more emails reminding and urging respondent to file a response to the NDC;

(3) the default was properly entered under rule 5.80; and

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(4) the factual allegations in the NDC deemed admitted by the entry of the default support a finding that respondent violated a statute, rule or court order that would warrant the imposition of discipline.

Despite actual notice and opportunity, respondent failed to participate in this disciplinary proceeding. As set forth in the Rules of Procedure of the State Bar, the court recommends disbarment.

RECOMMENDATION

Disbarment

The court recommends that respondent Robert Irving Duskis be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

California Rules of Court, Rule 9.20

The court also recommends that respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding.

Costs

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that Robert Irving Duskis, State Bar number 50438, be involuntarily enrolled as an

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inactive member of the State Bar of California, effective three calendar days after the service of this decision and order by mail. (Rule 5.111(D).)

Dated: June 30, 2014.

RICHARD A. HONN
Judge of the State Bar Court